IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3763 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJNIKANT SUKHDEVBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3763 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 26-12-2003, by which the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case pending against the petitioner, which is filed under the Bombay Prohibition Act. It is mentioned in the table that the petitioner was arrested on 23-12-2003 in connection with the said offence. After considering the aforesaid case and after considering the statement of some witnesses, the detaining authority has detained the petitioner under the preventive detention by the aforesaid order, which is under challenge in this petition.

2) Ms.Mishra, learned advocate for the petitioner has submitted that the petitioner was in judicial custody when the order of detention was passed and the detaining authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by her that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail and will continue his activities.

3) To substantiate her say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

> "There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an

application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

4) On the other hand, Ms.Raval, learned AGP, submitted that the petitioner has repeated the said offence and in order to curb his activities, it was necessary to detain him under preventive detention. Learned AGP has further submitted that when there are repeated cases, the concerned Magistrate do not grant bail in a routine manner. However, on this aspect, this Court is not required to express its opinion. It is clarified that if any bail application is preferred at the instance of the detenu, it is for the public prosecutor to oppose the same in accordance with law and it is for the concerned Magistrate to decide the same on its own merits and in accordance with law.

5) Considering the aforesaid judgment and considering the fact that there is nothing to show as to on what basis the authority has come to the conclusion that the petitioner will be released on bail, especially when no bail application is pending, the order of detention is required to be set aside.

6) For the foregoing reasons, this petition is allowed. The order of detention dated 26-12-2003 is quashed and set aside. The detenu, Rajnikant Sukhdevbhai Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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